

REMARKS/DISCUSSION OF ISSUES

Claims 1-13 are pending in the application. Claims 1-13 are finally rejected.

Claims 1-13 are finally rejected under 35 USC 103(a) as being unpatentable over Lys et al. (U.S. 6,211,626) (herein 'Lys') in view of Yablonowski.

In response to Applicant's previously argument presented in the response dated 4 May 2005, that Lys is not concerned with the sale of his lighting system, so that the purchaser of his system could be an intermediary rather than an end user, the Examiner has stated that this feature is not recited in the rejected claims.

However, Applicant's claims do call for installing a lighting system for a customer, measuring lumens generated from the lighting system, and determining a customers light usage fee based on the lumens.

This language excludes intermediaries such as distributors and retailers, because such intermediaries are involved in the sale of lighting systems to the end user. It is the end user who is interested in cost savings from usage of the system, not the intermediaries. The intermediaries are interested in selling the system, not in reaping cost savings from use of the system.

Thus, Applicant's claims are directed to the end user, not the intermediary. Lys is simply not concerned with selling his system to the end user, whether directly or through intermediaries.

In response to Applicant's previous argument that Lys fails to disclose charging a customer a usage fee, the Examiner

has stated that the term 'customer' indicates the buyer of a product or a service, thereby suggesting the 'charging' step.

However, Lys fails to disclose anything regarding a customer, a buyer of a product or service, or charging a customer.

The Examiner has pointed out that Yablonowski teaches determining customer usage fees for a lighting system. However, as already pointed out, such usage fees are based on overall power savings, not on lumens or spectrum generated.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner has stated that both Lys and Yablonowski teach method and system for installing a lighting system for a customer.

This is not true with regard to Lys. Lys is silent with regard to any aspect of installing a lighting system for a customer.

The Examiner has further stated that the motivation to combine the references to include charging a customer a fee for services rendered would be to generate funds for businesses to operate.

However, Applicant is not reciting a general step of charging a fee for services rendered. Applicant is charging a fee which is based on lumens generated or changes in the lighting spectrum generated. This particular method of charging for services rendered is unique and is at the crux of Applicant's invention. Both Lys and Yablonowski utterly fail to teach or suggest such a unique method of charging for services rendered.

In response to Applicant's argument that Lys fails to teach installing a lighting system for a customer, the Examiner has cited col. 7, lines 1-4 of the reference, wherein it is

stated that the manner of use of an LED unit includes placing it within an environment, and controlling the amount of current to the unit so as to generate a color within the color spectrum.

However, placing an LED unit in an environment is not the same as installing a lighting system for a customer. An 'environment' could simply mean a bench in a laboratory.

Moreover, even if the combination of Lys and Yablonowski could be said to suggest installing a system for a customer, neither reference teaches or suggests charging the customer based on lumens or spectrum changes generated. In fact, Yablonowski teaches charging the customer based on power savings, and thus actually teaches away from Applicant's invention.

In response to Applicant's argument that Lys does not teach any correlation between the amount of energy consumed and changes in the light spectrum, the Examiner has responded that the distinction between the current supplied to an LED and the energy consumed by the system is not made in the claims. However, Applicant's argument was made in response to the Examiner's argument with respect to claims 5 and 10 that Lys does teach a correlation between energy consumed and changes in the light spectrum.

In fact, claim 5 calls for a method comprising the steps of: (a) installing a lighting system for a customer; (b) measuring changes of light spectrum generated by the lighting system; and (c) determining a customers light usage fee based on the changes of light spectrum. Lys and Yablonowski, whether taken individually or in combination, fail to either teach or suggest these steps.

Claim 10 calls for a lighting solutions system comprising:

means for measuring lumen output of a lighting system; and (b) means for determining a fee based on the lumen output. Lys and Yablonowski, whether taken individually or in combination, fail to either teach or suggest such a system.

In summary, since Lys is concerned with current control of uniquely addressable lighting units in a computer lighting network, in order to generate colors within the color spectrum, and is not concerned with fees for the use of his system, or even the manner in which his system is marketed to the end user, there would be no motivation to modify Lys in the manner suggested by the Examiner.

The fact that businesses need funds to operate is irrelevant to a determination of obviousness in this case. In order for a combination of references to be effective under Section 103(a), there must be some teaching or suggestion contained within at least one of the references which would lead the skilled artisan to make the modification urged by the Examiner.

Neither Lys nor Yablonowski contain any teaching or suggestion that Lys' system could benefit from any of the power savings devices disclosed by Yablonowski. The mere fact that businesses need funds to operate is, while common knowledge, too general and vague to provide sufficient motivation.

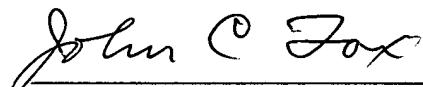
Even if Yablonowski could be said to suggest that Lys should charge a customer for usage, this modification would not result in Applicant's claimed invention, since Yablonowski's usage fee is based on power savings, not on lumens generated or light spectrum changes, as claimed by Applicant.

Thus, the combination of Lys and Yablonowski actually leads the skilled artisan away from Applicant's claimed invention.

Accordingly, it is urged that claims 1-13 are patentable under 35 USC 103(a) over Lys in view of Yablonowski, and it is urged that the rejection is in error and should be withdrawn.

In view of the foregoing, Applicant respectfully requests that the Examiner withdraw the rejection of record, allow all of the pending claims, and find the application to be in condition for allowance.

Respectfully submitted,



John C. Fox, Reg. 24,975
Consulting Patent Attorney
203-329-6584